HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL Nos.1348, 1349, 1350, 1351, 1353, 1355, 1356, 1373, 1381, 1383, 1413, 1416 and 1458 OF 2004

Writ Appeal No.1348 of 2004

Between:

Vivekananda Degree College,
rep. by its Secretary & Correspondent,
P.Radhakrishna, Nellore. . . .Appellant

AND

Registrar, Sri Venkateswara
University, Tirupati, Chittoor District & another. .
.Respondents

Writ Appeal No.1349 of 2004

Between:

H.M.Degree College,
rep. by its Correspondent,
Syed Basha Saheb, Rayachoti,
Kadapa District. . . .Appellant

AND

Registrar, Sri Venkateswara
University, Tirupati, Chittoor District. .Respondent

Writ Appeal No.1350 of 2004

Between:

Aditya Degree College,
rep. by its Correspondent,

B.Rami Reddy, Nellore. . . .Appellant

AND

Registrar, Sri Venkateswara
University, Tirupati, Chittoor District. .
.Respondent

Writ Appeal No.1351 of 2004

Between:

Sree Krishna Chaitanya Degree College,
rep. by its Correspondent,
P.V.Rami Reddy, Nellore. . . .Appellant

AND

Registrar, Sri Venkateswara
University, Tirupati, Chittoor District & another. .
.Respondents

Writ Appeal No.1353 of 2004

Between:

Sree Veda Vyasa Degree College,
rep. by its Correspondent,
B.Rama Devi, Proddatur,
Kadapa District. . . .Appellant

AND

Sri Venkateswara University,
rep. by its Registrar, Tirupati,
Chittoor District. . .Respondent

Writ Appeal No.1355 of 2004

Between:

Sri C.Sivashankar Reddy and Subbarami Reddy
Memorial Degree College,
rep. by its Correspondent,
C.V.Rajagopal Reddy, Kamalapuram,

Kadapa District. . . .Appellant

AND

Sri Venkateswara University,
rep. by its Registrar, Tirupati,
Chittoor District. . .Respondent

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Writ Appeal No.1356 of 2004

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Between:

Sri Parameswara Degree College,
rep. by its Correspondent,
R.Rajeswara Reddy, Jammalamadugu. . . .Appellant

AND

Sri Venkateswara University,
rep. by its Registrar, Tirupati,
Chittoor District. . .Respondent

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Writ Appeal No.1373 of 2004

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Between:

Sri Venkateswara Degree College,
rep. by its Correspondent,
P.Sunil Kumar, Nellore. . . .Appellant

AND

Sri Venkateswara University,
rep. by its Registrar, Tirupati,
Chittoor District. . .Respondent

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Writ Appeal No.1381 of 2004

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Between:

Sri Balaji Degree College for Women,
rep. by its Correspondent,

Dr.R.Venkata Swamy, Tirupati. . . .Appellant

AND

Sri Venkateswara University,
rep. by its Registrar, Tirupati,
Chittoor District & others. . .Respondents

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Writ Appeal No.1383 of 2004

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Between:

Sri C.Dass Arts & Science College,
rep. by its Correspondent,
R.Venkata Swamy, Sathyavedu,
Chittoor District. . . .Appellant

AND

Sri Venkateswara University,
rep. by its Registrar, Tirupati,
Chittoor District & others. . .Respondents

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Writ Appeal No.1413 of 2004

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Between:

Krishna Sarada Degree College,
rep. by its Correspondent,
P.Nagarjuna Reddy,Porumamilla,
Kadapa District. . . .Appellant

AND

Registrar, Sri Venkateswara University,
Tirupati, Chittoor District. .
.Respondent

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Writ Appeal No.1416 of 2004

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Between:

Sri Vaishnavi Degree College,
rep. by its Correspondent,
P.V. Ramana Reddy, Rajampet,
Kadapa District. . . .Appellant

AND

Registrar, Sri Venkateswara University,
Tirupati, Chittoor District. .
.Respondent

Writ Appeal No.1458 of 2004

Between:

Viswabharathi Degree College,
rep. by its Correspondent,
A.V.V. Raju, Tirupathi,
Chittoor District. . . .Appellant

AND

Registrar, Sri Venkateswara University,
Tirupati, Chittoor District. .
.Respondent

: J U D G M E N T :

Counsel for the Appellants : Sri B.V.Subbaiah
in W.A.Nos.1348, 1349, 1350,
1351, 1416 and 1458 of 2004

Counsel for the Appellants : Sri V.R.Reddy Kovvuri
in W.A.Nos.1353, 1355
and 1356 of 2004

Counsel for the appellant in : Sri G.Venkateswarlu
W.A.No.1373 of 2004 for Sri M.Venkata Narayana.

Counsel for the appellants in : None
W.A.Nos.1381, 1383 and 1413

of 2004

Counsel for Respondent No.1 in W.A.Nos.1348 and 1351 of 2004 and the sole respondent in W.A. Nos.1349, 1350, 1353, 1355, 1356, 1416 and 1458 of 2004.	: Sri B.Adinarayana Rao
Counsel for Respondent No.1 in W.A.Nos.1381 and 1383 of 2004 and the sole respondent in W.A. Nos.1373 and 1413 of 2004.	: Sri P.Sreeramulu Naidu
Counsel for Respondent No.2 in W.A.Nos.1348 and 1351 of 2004	: Sri M.V.S.Suresh Kumar
Counsel for Respondent Nos.2 and 3 in W.A.Nos.1381 and 1383 of 2004.	: Government Pleader for Higher Education.

21st September, 2006

Per G.S.SINGHVI, C.J.

Whether the conditions enumerated in Rule 10 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (for short, 'the Rules') for grant of permanent recognition/affiliation to the government and private institutions can be invoked by the competent authority for declining temporary affiliation in terms of Rule 9 of the Rules is the question which arises for determination in these appeals filed against orders dated 20-8-2004

and 27-8-2004 passed by the learned Single Judge in Writ Petition No.10838 of 2004 and batch and in Writ Petition No.12512 of 2004 respectively.

For the sake of convenience, we have taken the facts from Writ Appeal No.1348 of 2004.

Appellant - Vivekananda Degree College was established in Rohini Nagar, Nellore in August, 1996. For this purpose, the management of the college was granted permission by the competent authority under Section 20 of the Andhra Pradesh Education Act, 1982 (for short, 'the 1982 Act'). After establishing the college, the management submitted an application under Rule 9 of the Rules to Sri Venkateswara University, Tirupathi (for short, 'the University') for grant of temporary affiliation. On being satisfied that the appellant fulfills the conditions specified in Rule 9(2)(b) of the Rules, the University granted temporary affiliation for a period of one year, which was renewed from year to year till the Registrar of the University vide his letter dated 24-6-2004 informed the Correspondent of the appellant college that Executive Council has resolved to implement order dated 7-1-2004 passed by the Andhra Pradesh High Court in Writ Petition No.12340 of 2003 and, in that view of the matter, affiliation has not been granted to the college for academic year 2004-2005.

The appellant questioned the aforementioned decision of the University in Writ Petition No.11163 of 2004. In the affidavit filed by Secretary and Correspondent of the college, it was pleaded that the management has not violated any of the conditions of temporary affiliation and, therefore, the University is not justified in refusing affiliation for the year 2004-2005. It was further pleaded that the University authorities have misconstrued order dated 7-1-2004 passed by the Division Bench of the High Court in Writ Petition No.12340 of

2003 – **Society for Common Cause, Nellore v. Secretary, A.P. State Council for Higher Education, Saifabad Hyderabad and others** and, therefore, rejection of the application for temporary affiliation should be declared illegal and quashed.

In the counter affidavit filed by the Registrar of the University, it was averred that the decision not to grant temporary affiliation to the writ petitioner for academic year 2004-2005 was taken in the light of the observations made by the High Court in Writ Petition No.12340 of 2003. It was further averred that due to financial constraints, the management of the college has been requesting the University not to insist on the construction of own building as a condition for grant of affiliation, but, in view of the order passed by the High Court, the University decided not to extend the term of temporary affiliation.

The appellants of the other cases filed similar writ petitions questioning communication dated 24-6-2004 sent by the Registrar of the University. In the affidavits filed on their behalf, it was averred that the colleges are entitled to temporary affiliation up to a period of ten years as of right and the University was not justified in declining affiliation on the pretext of implementing order dated 7-1-2004 passed in Writ Petition No.12340 of 2003.

After taking cognizance of the pleadings of the parties and the arguments of their Advocates, the learned Single Judge formulated the following points:

> "(i) Whether private degree colleges cannot be denied temporary affiliation after completion of five years of establishment on the ground that such college does not own permanent buildings?
>
> (ii) Whether owning permanent buildings is essential pre-requisite, for a private degree college to seek permanent affiliation of the University?"

The learned Single Judge then referred to order dated 7-1-2004 passed by the Division Bench in Writ Petition No.12340 of 2003 and observed:

> "A reading of the judgment of the Division Bench in PIL case would conclude the following situation.
>
> a) The colleges did not take necessary steps to comply with the conditions imposed by the University at the time of granting temporary conditional affiliation;
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> b) When the conditions imposed are not complied with, University should not have granted further affiliation as a matter of course;
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> c) Once the temporary conditional affiliation is granted, all the colleges must scrupulously comply with the conditions. The University did not take steps to ensure regular inspection and compliance with the conditions, which has resulted in sorry state of affairs;
>
> d) Failure on the part of the affiliated institutions must result in some penal consequences against the colleges, including stoppage of further extension, which course of action has not been followed by the respondent University; and
>
> e) University should ensure that for the academic year 2004-05, no affiliation is granted to private colleges unless and until they comply with the conditions. If the conditions are not complied with, affiliation should be cancelled.
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> In view of the categorical findings, observations and directions of the Division Bench of this Court in the PIL case, the submissions of the learned counsel for the petitioners that this Court did not give any direction to withhold affiliation to petitioner colleges cannot be countenanced. Even while passing impugned orders, the University informed the petitioners that the question of granting further affiliation shall be

considered only after the colleges are shifted to their own buildings. The permission granted to the petitioners to establish college was not withheld and has admitted in the additional affidavit of the Vice Chancellor, so as to avoid inconvenience to the students, the colleges were permitted to continue second year and third year courses in the colleges. This only means that as and when the petitioner colleges acquire or construct their own buildings, the colleges would be considered for the grant of permanent affiliation. Indeed none of the counsel disputes this position."

While rejecting the argument of the writ petitioners (appellants herein) that the University can grant affiliation up to ten years and fulfillment of the conditions prescribed under Rule 10 of the Rules was not sine qua non for that purpose, the learned Single Judge analysed the provisions of the Rules and held:

> "A degree college, oriental college, Hindi Maha Vidyalaya, law college and postgraduate colleges have to obtain affiliation from the concerned University. As can be seen from Rule 9(2)(b) of the Higher Education Rules, a private college shall be accorded temporary affiliation subject to fulfillment of conditions as may be prescribed by the University. Such temporary affiliation is granted for a period of one year and is renewable for a period of five years by which time the educational agency shall have to fulfill the conditions stipulated for grant of permanent affiliation. The period of five years, during which, a college may be granted temporary affiliation annually, can however be relaxed up to ten years in deserving cases. Rule 9(2)(b) of the Higher Education Rules further makes it clear that all applications for temporary affiliation have to be made in Form III not later than three months prior to the expiry of period of temporary affiliation. Insofar as seeking permanent affiliation is concerned, a college which has completed five years of existence with temporary affiliation, has to necessarily seek permanent affiliation subject to condition that such college has pucca buildings of its own with prescribed facilities like furniture, library, laboratory etc., and also subject to condition

that it has fulfilled all the conditions prescribed for granting temporary affiliation. In case, a college has not constructed its own building during the period of five years, unless and until the University has granted relaxation, such college cannot function further and it is deemed that its affiliation is no more in force. Section 21 of the Education Act requires the competent authority, that is the University to grant affiliation in writing duly imposing conditions. Therefore, it is reasonable to assume that even when the University grants relaxation of the conditions as per Rule 9(2)(b) of the Higher Education Rules and extends temporary affiliation beyond five years, such relaxation has to be by order in writing.

The sum and substance of Rules 9 and 10 of the Higher Education Rules read together is that a private college, which has been given temporary affiliation has to construct its own buildings within a period of five years and seek permanent affiliation under Rule 10 of the Higher Education Rules by making an application in Form III. If a college fails to own pucca buildings, it has to seek relaxation of the Rules, which has to be granted by the University by order in writing under Rule 9(2)(b) of the Higher Education Rules. Though the legal position is clear, it is contended by the learned counsel for the petitioners that for grant of even permanent affiliation, there is no requirement of owning permanent buildings. This submission is misconceived and is to be rejected. Though the college established with the permission of the competent authority can function with temporary affiliation in rented buildings for a period of five years, a college cannot be permitted to function beyond five years in rented buildings and such college has no right to seek permanent affiliation from the University.

In these cases, the petitioner colleges in W.P.Nos.11149 and 12665 of 2004 have completed five years by the academic year 2003-04. The petitioners in other writ petitions have completed more than six years, but still curiously the University went on granting temporary conditional affiliation. The University counsel has not produced before this Court any order in writing by the University granting relaxation enabling the

petitioners to seek temporary conditional affiliation, year after year, even beyond five years. In the absence of any such relaxation granted by the University, the petitioners cannot contend that they have a right to continue even though they have completed five years with temporary affiliation. The petitioner colleges ought to have constructed the permanent buildings before the expiry of five years of their existence and ought to have obtained permanent affiliation. If it was not possible to own buildings, petitioners ought to have specifically asked for relaxation of the Rule. Even assuming that by reason of the temporary affiliation granted by the University even beyond five years, the conditions are deemed to have been relaxed, the petitioners in W.P.Nos.12703, 12584 and 10865 of 2004, which have completed ten years; writ petitioners in W.P.Nos.10974 and 12330 of 2004, which have completed eleven years with temporary affiliation and the petitioners in W.P.Nos.12610 of 2004 and 12671 of 2004, which have completed twelve and thirteen years respectively with temporary affiliation cannot take plea of deemed exemption. All these petitioners also did not make any efforts to own their own buildings and some of them now contend that they have purchased the land, and within a year or so, they will complete the construction of the buildings and on that ground they seek a writ of mandamus to the University to grant temporary affiliation for the academic year 2004-05. The petitioners have not complied with the conditions specified in Rules 9 and 10 of the Higher Education Rules and therefore they are not entitled for any relief in these writ petitions."

Learned counsel for the appellants assailed the order under challenge and argued that the interpretation placed by the learned Single Judge on the scheme of the Rules and the contents of Form III is clearly erroneous and the conclusion drawn by him that the institutions seeking temporary affiliation beyond a period of five years are duty bound to fulfill the conditions enumerated in Rule 10 is legally untenable. They further argued that order dated 7-1-2004 passed by the Division Bench in Writ Petition No.12340 of 2003 did not have the

effect of imposing a blanket ban on the grant of temporary affiliation beyond a period of five years and the University authorities gravely erred by declining temporary affiliation to the appellants on the premise that the institutions do not fulfill the conditions prescribed for permanent affiliation.

S/Sri B.Adinarayana Rao and P.Sreeramulu Naidu, learned counsel appearing for the University and the learned Government Pleader for Higher Education supported the orders under challenge and argued that the reasons assigned by the learned Single Judge for refusing to direct the University to revive the temporary affiliation granted to the appellants do not suffer from any infirmity.

We have given serious thought to the entire matter. In our opinion, even though the learned Single Judge's analysis of order dated 7-1-2004 passed by the Division Bench in Writ Petition No.12340 of 2003 appears to be consistent with the tenor of that order, his interpretation of Rules 9 and 10 is clearly erroneous and the orders under challenge are liable to be set aside.

We are further of the view that the decision taken by the University not to renew the temporary affiliation of the appellants is based on a mis-interpretation of order dated 7-1-2004 passed in Writ Petition No.12340 of 2003 and, therefore, the communications impugned in the writ petitions filed by the appellants are liable to be quashed.

Rules 1(2) (b) to (f), 2(d), 9 and 10 and Form III appended to the Rules, which have bearing on the decision of these appeals read as under:

“**1(2)(b)** Degree (imparting degree courses with or without attached Intermediate sections);

(c) Oriental Colleges;

(d) Hindi Mahavidyalas;

(e) Law Colleges (Colleges imparting Law Courses either exclusively or as Degree College offering Law Courses also);

(f) Post-Graduate Centres (Colleges imparting Post-Graduation Degree/Diploma courses either exclusively or as Degree Colleges offering Post-Graduation Courses also).

2(d) `Competent Authority' means the authority which is competent to grant permission/recognition/affiliation as the case may be to the educational institutions;

9. **Power to grant or withdraw Recognition/Affiliation:-** (1) Competent authority:-(a) The Board of Intermediate Education shall be the competent authority for granting or withdrawing of temporary/permanent recognition/affiliation for all educational institutions imparting intermediate education as per clause (ii) of sub-section (1) of Section 9 of the Andhra Pradesh Intermediate Education Act, 1971 (Act No.1 of 1971).

(b) For all other institutions mentioned at (b) to (f) in sub-rule (2) of Rule 1, the competent authority for granting or withdrawing of temporary/permanent recognition/affiliation shall be the University concerned.

(2) (a) Government Institutions shall be accorded permanent recognition/affiliation straight away, by the competent authority if he is satisfied that the conditions prescribed for this purpose are satisfied.

(b) To start with, the private institution shall be accorded temporary recognition/affiliation subject to fulfillment of such conditions as may be prescribed by the competent authority. The temporary recognition/affiliation is renewable annually for a period of five years relaxable to ten years in deserving cases by which time the educational agency shall fulfill the

conditions stipulated for grant of permanent recognition/affiliation. Applications for renewal of temporary recognition/affiliation shall be made to the competent authority in Form -III not later than three months prior to the expiry of the period of temporary/recognition/affiliation.

(3) (a) The educational agency of the private institution in respect of which the competent authority have accorded permission, is permitted to admit students and to appoint staff by following the procedure prescribed in Rule 7, immediately after the receipt of the orders of permission to open their institution. After fulfilling the conditions stipulated for grant of temporary recognition/affiliation, the educational agency shall make an application to the competent authority in Form-IV for approval of the appointments made and Form-III for grant of temporary recognition/affiliation to the institution. The application shall be made, accompanied by the following documents within a period of three months from the date of receipt of the order of the permission -

(i) copy of the orders in which permission to open the institution has been accorded;

(ii) lists of teaching and non-teaching staff appointed;

(iii) lists of students admitted into various classes/courses

(iv) bank challan in proof of the payment of inspection fee and Recognition/Affiliation Fees.

(b) On receipt of the application from the educational agency, the competent authority shall make inspection of the institution to find out the extent of fulfillment of the conditions prescribed for grant of temporary recognition/affiliation, on a date convenient to both parties.

(c) Unless the students are admitted and staff are appointed and other conditions are satisfied, the competent authority shall not accord approval to the staff appointed and accord temporary recognition/affiliation to the private institution and consequently the students shall not be allowed to appear for

the public examinations.

(4) The Inspection Fee and Recognition/Affiliation Fee to be collected from the educational agency shall be as prescribed by the competent authority indicated in sub-rule (1). The fees shall be credited in their respective head of account and can be utilised for incurring the expenditure involved.

10. Conditions for grant of permanent recognition/affiliation:- The competent authority shall grant permanent recognition/affiliation to the Government and private institutions which are enjoying temporary recognition/affiliation at least for a period of five years, subject to the fulfillment of the following conditions -

(1) that the institution has pucca buildings of its own with the prescribed facilities like furniture, library, laboratory, play ground etc.;

(2) that the educational agency fulfilled all the conditions prescribed for granting temporary recognition/affiliation;

(3) that the educational agency has implemented all the instructions issued by the competent authorities in all matters.

(4) that the educational agency has not denied admission to any student on the grounds of religion, caste, race or language;

(5) that the educational agency has not encouraged any propaganda or practice wounding the religious feelings of any class of citizens of India or insulting the religions or the religious beliefs of that class;

(6) that the educational agency has not refused for constituting the institution as a centre for conducting the Government examinations like Andhra Pradesh Public Service Commission, etc.;

(7) that the educational agency has appointed the staff following the procedure prescribed by the Government, from time to time, and got the appointments approved by the

competent authority;

(8) that the educational agency has reinstated the staff member whom it has removed/suspended, on receipt of orders from the competent authority for such reinstatement."

"FORM III

(Under Rule 9(2) and Rule 9(3) (a)

Application for grant of or Renewal of Temporary or Permanent Recognition/Affiliation to Colleges

(strike off irrelevant words)

1. Name of the institution with full address :

2. Date of opening of the institution :
(copy of order of permission has to be enclosed)

3. Name of the educational agency managing the institution :

4. Is the educational agency a registered body?
(a certified copy of registered deed should be enclosed)

5. Name of the Secretary/Correspondent/Manager :
6. Name of courses offered for which recognition/affiliation is sought for :
7. (a) Class-wise/course-wise strength of students :
(List of students to be enclosed)

8. List of teaching and non-teaching staff appointed indicating qualification and age at the time of appointment :
(Attested copies of the qualifications and age certificate of the employees to be enclosed).

9. Whether the prescribed corpus fund (endowment) has been created :

10. (a) Details of accommodation (supporting documents to be enclosed) :
(b) Whether the accommodation provided is owned or

rental:

(i) If owned, documentary evidence to be produced.

(ii) If rental, leasehold deed for a period of not less than five years to be produced (a declaration to construct own buildings within a period of five years also has to be produced).

11. Details of furniture to be furnished :
12. Details of laboratory equipment like apparatus, chemicals, microscopes and slides etc. :
13. Details of audio visual equipment available :
14. Details of books available in the library :
    (a) Text Books.
    (b) Reference Books
    (c) Literature Books
    (d) General Knowledge Books
    (e) Miscellaneous Books

15. Details of games (Sports articles/material/equipment available) :
16. Whether there is play ground for the institution?
17. Whether arrangements are made for the medical inspection of pupils:
18. Full details of the property that is present in the name of the education agency (Documentary evidence to be produced).
19. Whether prescribed sanitary facilities available : (Sanitary certificate from the prescribed Health Officer shall be enclosed).

20. Whether the educational agency has fulfilled all the conditions prescribed for granting of temporary/permanent recognition/ affiliation. If not, the conditions yet to be satisfied shall be indicated:
21. Whether the educational agency is agreeable to abide by the rules and regulations prescribed for granting of temporary/ permanent recognition/affiliation and other rules made under various provisions of Andhra Pradesh Education Act, 1982.

DECLARATION

On behalf of the educational agency of the institution, I……..son/daughter/wife of……do hereby declare that the rules and departmental orders have been fulfilled. I also declare that we shall abide by the conditions, rules of recognition/ affiliation and also other relevant provisions of the Andhra Pradesh Education Act, 1982 (Act No.1 of 1982) and the rules made thereunder.

I also declare that the particulars given above are correct to the best of my knowledge.

Signature of the Secretary/
Correspondent/Manager
(with stamp)."

An analysis of Rules 1(2)(b), 2(d) and Rule 9(2)(b) read with item 10 (b) of Form III makes it clear that the competent authority can accord temporary affiliation to a Degree College subject to fulfillment of the conditions prescribed by such authority. In the normal course, temporary affiliation can be extended up to five years, but the competent authority has the discretion to extend it up to ten years in deserving cases. If during this period, the institution wants to seek permanent affiliation, then it has to fulfill the conditions specified in Rule 10 of the Rules. The use of the expression 'relaxable to ten years in deserving cases' in Rule 9(2)(b) is clearly indicative of the intention of the rule making authority to empower the competent authority to grant temporary affiliation beyond five years and up to a maximum period of ten years. The exercise of power vested in the competent authority to grant temporary affiliation beyond five years is subject to the condition that it must feel satisfied that there exist good reasons for doing so. The object underlying the scheme of the Rules is that in the beginning, the competent authority may not insist on the

applicant fulfilling the conditions prescribed for grant of permanent affiliation, but during the tenure of temporary affiliation the applicant is required to muster resources and make endeavour to fulfill those conditions, which includes construction of own building. In a given case, the competent authority can insist on fulfillment of all or any of the conditions enumerated in Rule 10 while granting or renewing temporary affiliation beyond a period of five years. However, there is nothing in the language of Rule 9 (2) (b), from which it can be inferred that the competent authority is obliged to decline renewal beyond a period of five years if the applicant does not fulfill the conditions stipulated for grant of permanent affiliation. No doubt, in terms of item 10(b)(ii) of Form III, the representative of applicant institution has to furnish a declaration to construct own building within five years, but in exercise of the power vested in it under Rule 9(2)(b), the competent authority can relax this condition in appropriate cases. The decision of the competent authority to extend temporary affiliation beyond five years can reasonably be construed as an implied relaxation of the condition of constructing building within a period of five years and it is not possible to draw a dubious inference that this has been done with an ulterior motive. In this context, it must be remembered that while deciding an application made under Rule 9 for grant of temporary affiliation, the competent authority does not decide a lis between two parties. The exercise envisaged under that rule is only intended to ensure that the applicant institution fulfills the conditions prescribed by the competent authority.

We are further of the view that the condition of construction of building within five years for which a declaration is required to be furnished in terms of item 10(b)(ii) of Form III is not mandatory. Rather, it is directory and it is within the discretion of the competent authority to

insist on fulfillment of this condition at the time of considering the request of the institution for extension of affiliation beyond five years. If the competent authority feels satisfied with the justification put-forward by the applicant for its inability to construct pucca building within five years, then it can extend the affiliation up to a maximum of ten years, by which time the applicant has to ensure that pucca building is constructed. If it was intended that the conditions prescribed under Rule 10, which necessarily includes existence of pucca building belonging to the institution, library, laboratory, play ground etcetera, must be fulfilled by the applicant institution within five years, the competent authority would not have been vested with the discretion to grant affiliation up to ten years in deserving cases. In our considered view, once the competent authority, after considering the application made by the institution extends temporary affiliation beyond five years, the conditions enumerated in Rule 10 for grant of permanent affiliation will be deemed to have been relaxed and there is no warrant for presuming that this has done so for extraneous reasons.

The observations made by the learned Single Judge suggesting that the action of the University in extending temporary affiliation to the appellants beyond five years should be treated as unauthorised and illegal because no specific order for relaxing Rule 9(2)(b) was passed, are clearly against the plain language of Rule 9(2) (b), which, as mentioned above empowers the competent authority to extend temporary affiliation in deserving cases.

Adverting to communications dated 24-6-2004 by which the Registrar of the University informed the Correspondent of the colleges that temporary affiliation has not been extended for academic year 2004-2005, we find that the decision contained therein is entirely based on the resolution passed by the Executive Council of the

University to implement order dated 7-1-2004 passed in Writ Petition No.12340 of 2003. A careful reading of that order shows that the Division Bench did not direct the competent authority to refuse renewal of temporary affiliation in each and every case without regard to the contents of the application made by the institution and the reasons put-forward by it for relaxing the conditions, which are required to be fulfilled for grant of permanent affiliation. What the Division Bench had done was to direct the State Government and the University to ensure that affiliation is not granted to such of the institutions which had not complied with the conditions of temporary affiliation. It is not the pleaded case of the University nor it has been argued by the learned counsel appearing on its behalf that renewal of the temporary affiliation of the appellants had been refused on account of non-fulfillment of the conditions incorporated in the order granting temporary affiliation. Indeed, communication dated 24-6-2004 does not contain a stipulation that renewal of temporary affiliation is being refused on account of non-fulfillment of the conditions specified in the previous renewal. Therefore, it must be held that the decision of the competent authority to refuse renewal of the temporary affiliation to the appellants is vitiated due to non-application of mind.

Before concluding, we may mention that while disposing of Review WPMP.No.23611 of 2004 filed by M.S.R.Degree College, Kavali and Review WPMP.No.23610 of 2004 filed by Sree Veda Vyasa Degree College, Proddatur and three others, the Division Bench made it clear that if order dated 7-1-2004 passed in Writ Petition No.12340 of 2003 is used against them, then they shall be at liberty to question the resultant action and the litigation instituted by them will be decided without being influenced by that order.

In the result, the appeals are allowed. Orders dated 20-8-2004

and 27-8-2004 passed by the learned Single Judge are set aside. As a consequence, the writ petitions filed by the appellants shall stand allowed and the decision of the competent authority not to renew the temporary affiliation of the appellants shall stand nullified and the temporary affiliation and/or renewal thereof granted to the appellants by the competent authority in furtherance of interim order dated 1-9-2004 passed by the Division Bench shall stand regularised.

G.S. SINGHVI, C.J.

21st September, 2006.

G.V. SEETHAPATHY, J.

ARS/SVS